

Brandon Mark is the co-chair of the firm's litigation department and has litigated in state and federal courts throughout the country in cases involving complex commercial disputes, mass torts, government contracts, the False Claims Act and other whistleblower protections.



Brandon J. Mark

Litigation Practice Area Chairperson
Shareholder | Salt Lake City

Biography

Brandon Mark is co-chair of the litigation department and works on the firm's litigation, healthcare and real estate practice teams. Mr. Mark has represented clients in state and federal trial courts around the country, including the Utah Supreme Court and the Utah Court of Appeals, the Nevada Supreme Court and the United States Courts of Appeals for the Eighth, Ninth, Tenth and Federal Circuits.

In recent years, Mr. Mark has focused his practice on the many legal issues involving government contracts, including representing whistleblowers who have information about fraud committed on government programs.

Mr. Mark has represented numerous whistleblowers under the False Claims Act and represented parties in actions under the Act in almost every covered industry—health care, defense contracting and higher education. For example, in spring 2014, the Department of Justice announced that the government had intervened in a whistleblower lawsuit brought by Mr. Mark's clients against several for-profit colleges in Idaho, Utah, California, Colorado, Arizona and Wyoming under the federal False Claims Act. The government typically intervenes in only about 20 percent of suits brought under the False Claims Act.

Mr. Mark and his colleagues have also represented clients in protests of government procurement and contracting decisions before numerous Utah agencies, including the Utah Department of Health, the Utah State Board of Education and the Utah Communications Authority, among others. In 2020, Mr. Mark and his team successfully protested an erroneous procurement outcome on behalf of the Utah Foster Care

Contact information

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Capabilities

Appeals

Business & Commercial Litigation

Government Enforcement, Securities
and White-Collar Defense

Healthcare

Real Estate Litigation

Plaintiffs Litigation

Whistleblower (Qui Tam)

Mass Tort

Civil Rights Including Title VII and
Title IX

Defective Products

Licensed/Admitted

Utah

Oregon

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Foundation which succeeded in overturning the decision to award the state's five-year contract to an out-of-state entity. Utah Foster Care was later selected to receive the contract under a fair selection process that complied with the procurement law.

Mr. Mark is also an experienced first chair trial attorney. In 2019, Mr. Mark and his team persuaded a jury in Colorado to only award the former employer of his pro bono client a single dollar after a five-year lawsuit filed in retaliation for Mr. Mark's client blowing the whistle on her former employer to the Colorado Attorney General. In 2020, her former employer was hit with a judgment of more than \$3 million in penalties in a suit filed by the Colorado Attorney General.

In 2015, Mr. Mark and his colleagues obtained a jury verdict for their clients against Salt Lake County and its contractor—and later a substantial award of attorneys' fees—after the defendants' shoddy stream restoration work permanently damaged their clients' natural mountain property. When the defendants refused to engage in good-faith settlement negotiations, Mr. Mark and his team proceeded to a trial by jury and obtained a recovery more than ten times greater than any prior offer from defendants.

In fall 2013, Mr. Mark assisted in a five-week trial in a small Utah town involving allegations from several dairies that a local power plant was emitting "stray current" into the environment, to which cows are supposedly susceptible. Although the court declared a mistrial over juror misconduct at the very end of the trial, through post-trial motions, Mr. Mark and his colleagues successfully dismissed three of the four remaining claims against their client as well as punitive damages, which resulted in the dairies settling.

Mr. Mark attended the University of California-Berkeley School of Law and was admitted to the Order of the Coif upon graduation. Mr. Mark was a member of the California Law Review and the co-director of the school's Homeless Outreach Project in 2001-2002, a student-run legal clinic. He earned honors for academic achievement in several courses, including contracts, evidence, civil procedure and ethics.

After graduating from law school, Mr. Mark served as a judicial law clerk to the Honorable Daniel Friedman of the United States Court of Appeals for the Federal Circuit.

Experience

Defended Claims of Interest Royalty and Reached Beneficial Settlement

Defended mining company from claims that a another company is entitled to an interest royalty. Years later the claim was refiled and a beneficial settlement was reached for the clients.

Defending a Large Gold Mine Against Royalty Claims

Representing an international gold mining company's mine against royalty claims by another world-class gold mine.

Secured Jury Verdict in Breach of Contract and Title IX Lawsuit - 1.7M in Damages Awarded

Representing a client in a lawsuit filed in federal court against Southwestern Oregon Community College on breach of contract and Title IX claims, Parsons' attorneys secured a jury verdict on the breach of contract charge, resulting in an award of \$1.7M in damages. The client was subject to harassment and discrimination, resulting in her discontinuing the pursuit of a nursing degree after she had disclosed previous employment experience in the adult entertainment industry.

Center for Excellence in Higher Education v. Debbi Potts

Successfully defended against a retaliatory lawsuit against a whistleblower by her former employer, resulting in a jury verdict to her employer for only \$1 after 6-plus years of litigation.

As Lead Counsel, Netted Verdict in Jury Trial Against County for Fifth Amendment Taking, Trespass and Negligence

Brandon Mark and his co-lead counsel successfully persuaded a jury in federal court to award their clients nearly all of the damages they sought against a Utah county and its contractor for the damage they caused to the client's mountain property. The jury returned a verdict in Mr. Mark's client's favor on all three claims—trespass, negligence and 5th Amendment Taking—and awarded punitive damages against the contractor. Mr. Mark and Parsons Behle & Latimer also convinced the court to award their clients' attorneys' fees for the county's unconstitutional taking.

Successful Settlement of False Claims Act Suit

Mr. Mark and his co-counsel at Parsons Behle & Latimer settled a multi-million dollar False Claims Act suit against a local government contractor on favorable terms. Mr. Mark and Parsons Behle & Latimer worked doggedly to understand the complex facts and present a persuasive case to foster settlement

As Lead Trial Counsel, Prevailed in Commercial Lease Dispute

Acting as lead trial counsel, Brandon Mark successfully persuaded a state court to award his client a significant recovery in a dispute over the proper interpretation of a commercial lease. The court awarded Mr. Mark's client a substantial judgment, and the award included the client's costs and a significant portion of the client's attorneys' fees.

Successfully Dismissed Three out of Four Claims and Punitive Damages Exposure in Billion Dollar Mass Tort Case

Brandon Mark was an integral member of the trial team that successfully moved for the dismissal of three of the four remaining claims brought by dozens of Utah dairy farms against a local utility, claiming more than \$1 billion in compensatory damages. Mr. Mark and the Parsons trial team also successfully dismissed the plaintiffs' punitive damages claims.

Successfully settled claims against a dairy farm and milk processing facility

Parsons Behle & Latimer successfully settled a contract dispute with the dairy farm's vendor, which allowed the company to retain equipment vital to its business operations.

Obtained A Dismissal of \$120 million lawsuit against a national financial services firm

Parsons Behle & Latimer successfully obtained a dismissal of all claims against a well-known financial services firm for negligent supervision, tortious interference and conspiracy.

Represented multiple parties involved in equipment lease disputes

Parsons Behle & Latimer successfully represented numerous parties in disputes with Utah-based equipment lease brokers (e.g., Tetra Financial Group, Mazuma Capital Corp) and a related bank (Republic Bank, Inc.).

Summary judgment for a global mining company in suit for tens of millions of dollars

Parsons Behle & Latimer obtained summary judgment on claims that the mining company was bound to pay significant mining royalties pursuant to a thirty-year-old area-of-interest agreement.

Summary Judgment in Quarter Billion Dollar Mass Tort Case

Obtained summary judgment and dismissal of all claims against a global leader in power technologies in stray current litigation brought by two dozen dairy farms arising out of the client's design and construction of high-voltage direct current (HVDC) converter stations in central Utah.

Represented a leading telecommunications provider to immediately stop violations of the federal Computer Fraud and Abuse Act and to identify the perpetrators of those violations

Defended a local resort town against numerous land use and property rights claims

Obtained dismissal of claims by a variety of aggrieved landowners over a broad spectrum of land-use issues, including an award of attorneys' fees to the client.

Accomplishments

Professional

Up and Coming Legal Elite, *Utah Business* magazine, 2012

Rising Star, *Mountain States Super Lawyers*, 2010 - 2018

Martindale-Hubbell AV® Preeminent™ rating

Academic

University of California at Berkeley, Boalt Hall School of Law (J.D., 2003)

Honors:

Order of the Coif (Top ten percent)

Weber State University (B.S., 2000)

Honors:

Outstanding Graduate, Economics Department (Graduated First in Class)

Goddard Scholar (Top ten GPA in the Business School)

Outstanding Student Scholar (College of Social and Behavioral Sciences)

Associations

Professional

LGBT and Allied Lawyers of Utah (LALU)

President

(2016 – Present)

Utah Federal Bar Association Executive Committee

(2020 – Present)

Utah Bar Litigation Section Executive Committee

(2019 – Present)

American Inns of Court

Member

(2004 - Present)

American Bar Association

Member

(2003 - Present)

American Association of Justice
Member
(2013 – Present)

Community

Volunteer Soccer Coach (Impact United Recreational League)
(2017 – Present)

Planned Parenthood Association of Utah / Planned Parenthood Action Council
Board Member
Past Treasurer
(2010 – 2018)

Articles

The Coronavirus Relief Fund Provides Flexibility—and Potential False Claims Act Liability—for Local Governments and Officials May 26, 2020

Strategies on Acing the SBA's New PPP Loan Forgiveness Application May 20, 2020

Beware the Whistleblower: Avoiding Fraud Liability under the PPP May 12, 2020

Liabilities When Re-Opening: Steps to Minimizing the Risks April 28, 2020

Whistleblower's Share of False Claims Act Qui Tam Award July 11, 2017

Can a Bad Patent = False Claims Act Violation? October 18, 2016

Defend Trade Secrets Act + Uniform Trade Secrets Act = Potent Defense For Whistleblowers June 30, 2016

The Intersection Of The Eleventh Amendment and The False Claims Act—A Recurring And Difficult Issue March 25, 2016

Why do Certain Companies Routinely Have Problems with Fraud? February 29, 2016

The Rise of the Whistleblower Phase 2 February 9, 2016

Should a Relator's Status as an Original Source Limit the Temporal and Geographic Scope of Her Claims? June 30, 2015

Can an Employee Release a Claim Under the Anti-Retaliation Provision of the FCA? May 8, 2015

Recent Appellate Decisions Highlight Narrowness of Public Disclosure Bar April 13, 2015

What Really Motivates Whistleblowers? Misperceptions Abound... January 13, 2015

Lincoln's Law Protects U.S. Government from Fraud and Abuse, December 19, 2014
Intermountain Commercial Record

FERA'S "NEXUS REQUIREMENT" November 3, 2014

False Claims Act in the Popular Press October 17, 2014

Statistics About False Claims Act Suits Against The Largest American Companies June 30, 2014

Supreme Court Rules That Employees Of Contractors Are Protected Under Sarbanes-Oxley's Whistleblower Protections May 9, 2014

False Claims Act Applies to Minority-Owned Business Set Asides April 8, 2014

Article Review: What Is The Scope Of Immunity For "State Actors" Under the False Claims Act April 2, 2014

Presentations

Healthcare Fraud and Abuse - Fundamentals in Healthcare Law, November 17, 2021
Fundamentals in Healthcare Law Webinar Series

Strategies on Acing the SBA's New PPP Loan Forgiveness Application, May 20, 2020
Parsons Behle & Latimer Webinar

Federal False Claims Act, November 21, 2014
Utah State Bar Fall Forum